

## REMARKS

Claims 1, 3-14, 23-27 are pending in the application. Upon entry of this paper, claims 15-18, previously withdrawn, will be cancelled. Claims 3, 12, and 13 will be amended. Applicant traverses the rejections.

### Finality of Office Action

Applicant respectfully requests that this paper be entered by the Examiner, placing the pending claims in condition for allowance. Applicant submits that the proposed amendments of claims 3, 12, and 13 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. For example, claims 12 and 13 are amended only to include all the features of base claim 1, so they are unchanged in scope. Claim 3 is amended only to correct its claim dependency, as it currently depends from cancelled claim 2. Therefore, this amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the final Office Action by the Examiner presented some new arguments as the application of the art against Applicant's invention. It is respectfully submitted that the consideration of this amendment would allow the Applicant to respond to the final rejections.

### Compliance with 35 U.S.C. §102

The Office Action indicated that claims 1, 3-7, 12, 13, 14, and 23-27 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,893,889 to Harrington et al. ("Harrington"). The PTO specifies in MPEP §2131 that in order for a reference to anticipate a claim under §102, the reference must teach each and every element recited in the claim.

### Independent Claims 1 and 27

Applicant submits that claims 1 and 27 are not anticipated by Harrington because Harrington fails to disclose all the respective features of those claims. More specifically, Harrington fails to disclose a prosthetic device having, among other things, "an entirely spherical ball bearing."

In its remarks, the Office Action identifies the language of Harrington reciting that a “generally spherical pivot ball on a post extends upwardly.” Relying on this, the Office Action states that the claimed limitation of an “entirely spherical ball bearing” is anticipated. Applicant traverses the rejection because the drawings more clearly indicate what the Harrington reference describes. Based on the written description of Harrington, it is possible that prior to manufacturing the artificial disc, the components include a pivot ball independent of the post, as suggested in the Office Action. However, in that pre-assembled condition, the components do not anticipate claims 1 and 27 because they do not have the relative positions recited in the claims.

Before the Harrington disc can be assembled, the post and ball must be joined. When this happens, the post and ball no longer form an entirely spherical ball bearing. As plainly shown in Fig. 2 of Harrington, the ball and post are integral with the protruding post giving the ball a non-spherical feature. If it were not so, it appears the disc of Harrington would fall apart, as Harrington describes the small sized neck 57 and that the “collar 54 will retain the spherical upper end 46 within the central cavity of the tubular portion.” Col. 3, lines 44-48. Therefore, the assembled disc of Harrington includes the ball and post shown in Fig. 2, and does not include an “entirely spherical ball bearing,” as recited in claims 1 and 27. Thus, the device of Harrington, in its pre-assembled condition or in its assembled condition, does not anticipate the subject matter of claims 1 and 27.

#### Independent Claim 12

Claim 12 is rewritten in independent form to include all the subject matter of base claim 1. Accordingly, claim 12 is unchanged in scope, raises no new issues, and should be in condition for immediate consideration by the Examiner. Claim 12 recites among other things, that the damping sleeve comprises shape memory alloys. Harrington discloses no such feature. Accordingly, for at least this reason, claim 12 should be allowable over Harrington.

#### Independent Claim 13

Claim 13 is rewritten in independent form to include all the subject matter of base claim 1. Accordingly, claim 13 is unchanged in scope, raises no new issues, and should be in condition for immediate consideration by the Examiner. Claim 13 recites among other things, that the

damping sleeve is configured to produce a cavity for receiving a lubrication medium. Harrington discloses no such feature. Harrington discloses a donut-shaped shock absorbing member 68 having a central through-hole, but it is not configured to produce a cavity for receiving a lubrication medium as recited in claim 13. A through-hole is not a cavity. Accordingly, for at least this reason, claim 13 should be allowable over Harrington.

#### Dependent Claims 3-11, 14, and 23-26

Claims 3-11, 14, and 23-26 depend from and add additional features to independent claim 1. Therefore, these claims should be allowable for at least the reasons that independent claim 1 should be allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and allow these claims.

#### Conclusion

For at least the reasons set forth above, Applicant submits that the pending claims 1, 3-11, 14, and 23-27 are in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding objections and rejections and issue a formal notice of allowance.

The final Office Action contains characterizations of the claims and the related art to which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the final Office Action.

Please grant any extension of time required to enter this response and charge any additional required fees to our Deposit Account No. 08-1394.

Respectfully submitted,



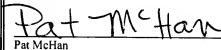
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Dated: July 3, 2007

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Pat McHan